

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Thomas J. Willi, Town Administrator (954) 797-1030

**PREPARED BY:** Barbara McDaniel, MMC, Assistant Town Clerk

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 1

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, SUBORDINATING THE LIEN OF THE TOWN OF DAVIE ON PROPERTY OWNED BY JOLMY ENTERPRISES, INC. WITH RESPECT TO CERTAIN MORTGAGE INDEBTEDNESS AND PROVIDING AN EFFECTIVE DATE.

**REPORT IN BRIEF:** This resolution subordinates the Town's lien interest in the Jolmy parcel relative to the Oaks Road reconstruction project. The subordination agreement maintains the Town's 80% valuation margin provided for in R-97-108.

The Town and Jolmy Enterprises jointly received an economic development grant from the State of Florida which, in conjunction with development of the Jolmy Transportation Complex, provided funds for reconstruction of Oaks and Burris Roads. Reimbursement of the roadway construction costs are subject to satisfactory completion of the development elements associated with the Transportation Complex and the Town has secured a lien against the Jolmy Properties to protect this interest.

Resolution R-97-108 provides a mechanism for the Town to subordinate its lien interests to future mortgage indebtedness subject to the total encumbrances on the property not exceeding 80% of the appraised land value. The current encumbrances, including the encumbrance of \$357,262 proposed for Council consideration, are listed on the attached spreadsheet indicating that \$6,454,833.36 has been encumbered which reflected against the appraised land value equates to 75.06% of the appraised value.

**PREVIOUS ACTIONS:** The Town has previously granted lien subordinations consistent with the provisions of R-97-108 which currently total 70.90% of the appraised value including the Town's lien. Subordinating resolutions may be considered up to a maximum 80% of the current appraised valuation.

**CONCURRENCES:** Not Applicable

**FISCAL IMPACT:** Not Applicable

**RECOMMENDATION(S):** Motion to approve the resolution.

**Attachment(s):** Resolution and backup documentation

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, SUBORDINATING THE LIEN OF THE TOWN OF DAVIE ON PROPERTY OWNED BY JOLMY ENTERPRISES, INC. WITH RESPECT TO CERTAIN MORTGAGE INDEBTEDNESS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie entered into an agreement between the Town and Jolmy Enterprises, Inc. approved by Resolution R-97-108, adopted by the Town Council on the March 19, 1997; and

WHEREAS, said agreement provided for a lien in favor of the Town of Davie imposed upon the property owned by Jolmy Enterprises, Inc. as described in Exhibit "A" attached hereto; and

WHEREAS, the Town Council has determined that based upon a written request submitted to the Town requesting subordination of the lien to proposed mortgages, there is sufficient evidence to the satisfaction of the Town that the total encumbrances against the subject property including the proposed indebtedness as represented by the mortgage in favor of United National Bank of Miami/Mellon Bank in the amount of \$357,262, when added to the Town's lien, does not exceed 80% of the value of the property; and

WHEREAS, those conditions being met, the Town wishes to subordinate its lien created by the aforementioned agreement between the Town of Davie and Jolmy Enterprises, Inc. to the note and mortgage.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the lien created by Resolution R-97-108 and the agreement appended thereto is hereby subordinated to the interest created by the mortgagee in that mortgage to be recorded in favor United National Bank of Miami/Mellon Bank in the amount of \$357,262.

SECTION 2. The recording of this Resolution among the Public Records of Broward County, Florida shall constitute subordination of the Town's lien against the property described in Exhibit "A" to the mortgage described above to the extent of \$357,262.

SECTION 3. In the event the aforementioned mortgage is not recorded among the Public Records of Broward County, Florida, within 120 days of the date of this resolution, this subordination shall automatically terminate with respect to that mortgage which is not recorded within the 120 day time period.

SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004

*Gail E. Stevens, P.A.*

*Attorney at Law*

*Telephone (954) 463-5266 Ext. 11  
(954) 463-2020*

*412 N.E. Fourth Street  
Ft. Lauderdale, Florida 33301*

SEPTEMBER 23, 2004

ARTHUR ROSEN  
RE: JOLMY ENTERPRISES, INC.

RE: SUBORDINATION AGREEMENT

Dear Art:

Jolmy Enterprises, Inc. is encumbered by a first mortgage to Mellon Bank in the original amount of \$160,000.00. This mortgage was taken out in 1988. In 1997, the note was consolidated and restated due to intervening advances. The new note was for approximately 357K. It was recorded just after the Town's Agreement in July, 1997. There is 37K that is new money per the restated note which consolidated all of the intervening advances and was filed in O.R. Book 26740, Page 610. As such, we need a subordination from the Town of Davie as to the restated and consolidated note that ended up being a "future" mortgage as to the new money amount.

Therefore, we need the subordination of Town of Davie Agreement filed in O.R. Book 26301, Page 861 as amended in O.R. Book 29021, Page 495 to Mortgage in favor of United National Bank of Miami filed May 2, 1988 in O.R. Book 15395, page 909 in the original principal sum of \$160,000.00 together with Assumption Agreement filed in O.R. Book 16356, Page 639 and Future Advance Agreement filed in O.R. Books 16610, Page 441: O.R. Book 17233, Page 409 and O.R. Book 22190, Page 182 and Stipulation filed in O.R. Book 22227, Page 988; ALL as merged into Supplemental Mortgage Deed filed in O.R. Book 26740, Page 610 of the Public Records of Broward County, Florida.

Very truly yours,



Gail E. Stevens

2001

This Instrument was Prepared  
by and to be returned to:  
GAIL E. STEVENS, P.A.  
412 NE Fourth Street  
Ft. Lauderdale, FL 33301

### MORTGAGE SUBORDINATION AGREEMENT

KNOW ALL PERSONS by these presents that on \_\_\_\_ day of \_\_\_\_\_, 2004, for and in consideration of the sum of Ten Dollars and other valuable considerations, the undersigned, TOWN OF DAVIE (hereafter "Davie") owner and holder of that certain lien obligation contained in Agreement between the Town of Davie, Florida and Jolmy Enterprises, Inc. (hereafter Jolmy) dated January 8, 1997 and filed for record on April 18, 1997 in Official Records Book 26301, Page 861 as amended by resolution filed in O.R. Book 29021, Page 495 of the Public Records of Broward County, Florida encumbering the following described real property:

### SEE ATTACHED LEGAL DESCRIPTION

do hereby subordinate the above described lien obligation(s) as to the parcel legally described in exhibit attached hereto to that certain mortgage given by Jolmy to United National Bank of Miami filed May 2, 1988 in O.R. Book 15395, page 909 in the original principal sum of \$160,000.00 and Supplemental Mortgage Deed filed in O.R. Book 26740, Page 610 of the Public Records of Broward County, Florida in the original principal sum of \$357,262.00

IN WITNESS WHEREOF, the undersigned do hereby set their hands and seals, this \_\_\_\_ day of \_\_\_\_\_, 2004

In the presence of

TOWN COUNCIL  
TOWN OF DAVIE, FLORIDA

\_\_\_\_\_  
Signature Witness #1

By: \_\_\_\_\_  
Print Name \_\_\_\_\_

\_\_\_\_\_  
Witness #1 Print Name Above

Title: \_\_\_\_\_

\_\_\_\_\_  
Signature Witness #2

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Witness #2 Print Name Above

Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD

THE FOREGOING instrument was acknowledge before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_ as \_\_\_\_\_ of Town of Davie, Florida who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of FLORIDA

My Commission Expires:

A portion of FERNCREST RIDGE, according to the Plat thereof, as recorded in Plat Book 49, at Page 29, of the Public Records of Broward County, Florida; more particularly described as follows:

Commence at the Northeast corner of said Plat, same being the Southeast corner of Tract 1, Tier 9 of NEWMAN'S SURVEY, according to the Plat thereof, as recorded in Plat Book 2, Page 26, of the Public Records of Dade County, Florida; thence South  $14^{\circ}50'17''$  West, along the East line of aforesaid Plat of FERNCREST RIDGE, 262.07 feet to the Point of Beginning; thence continue South  $14^{\circ}50'17''$  West, along said East line 368.93 feet; thence North  $87^{\circ}36'09''$  West, 533.83 feet to the South line of Tract 2 of aforesaid Plat of NEWMAN'S SURVEY; thence North  $75^{\circ}09'43''$  West, along said South line, 79.82 feet; thence South  $14^{\circ}50'17''$  West, 242.01 feet to a South line of aforesaid Plat of FERNCREST RIDGE; thence North  $89^{\circ}56'59''$  West, along said South line, 79.72 feet; thence North  $85^{\circ}42'13''$  West, continue along said South line 201.56 feet; thence South  $69^{\circ}31'58''$  West, continue along said South line, 300.00 feet; thence South  $84^{\circ}46'09''$  West, continue along said South line, 38.12 feet to the Southwest corner of said Plat of FERNCREST RIDGE; thence North  $14^{\circ}50'17''$  East, along a West line of said Plat, 390.82 feet to the Southeast corner of Tract 2, Tier 13 of aforesaid Plat of NEWMAN'S SURVEY; thence North  $75^{\circ}09'43''$  West, along aforesaid South line of said Tract 2, 132.06 feet; thence North  $22^{\circ}52'26''$  East 52.57 feet; thence North  $12^{\circ}18'27''$  East 113.11 feet; thence North  $14^{\circ}50'17''$  East, 157.00 feet; thence North  $83^{\circ}46'38''$  East, 138.99 feet to the Northeast corner of the South one-half (S1) of said Tract 2, Tier 13; thence North  $14^{\circ}50'17''$  East, along the East line of said Tract 2, Tier 13; same being the West line of aforesaid Plat of FERNCREST RIDGE, 372.00 feet to the Northeast corner of aforesaid Tract 2, Tier 13; thence South  $75^{\circ}09'43''$  East, along said North Line of said Tract 2, 343.67 feet; thence South  $64^{\circ}34'02''$  East, 259.54 feet; thence South  $46^{\circ}33'49''$  East, 154.11 feet; thence South  $50^{\circ}28'26''$  East, 380.71 feet; thence South  $86^{\circ}43'06''$  East, 112.84 feet to the Point of Beginning.

Said lands lying in Broward County, Florida, containing 22.35 acres, more or less.

## JOLMY LIEN SUBORDINATION STATUS

R-97-108 adopted 3/19/97 authorized an agreement with Jolmy Enterprises, Inc. This agreement providing for a property lien security to secure the Town's obligations relating to roadway grant and utility construction. The lien was allowed to be subordinated to future mortgaged indebtedness under certain conditions including that the total encumbrances against the property not to exceed 80% of the value of the property (appraised at \$8.6 million). The 80% limit includes the Town's lien of \$2 million established in the resolution. The following table shows a running total of the lien subordinations which have been approved by the Town.

<b>Reso Number</b>	<b>Date</b>	<b>Name</b>	<b>Amount of Lien</b>	<b>Cumulative Total of Liens</b>	<b>\$8,600,000 Lien % of Appraisal</b>
*	02/03/95	Ultimo	\$100,000.00	\$100,000.00	1.16%
*	07/25/95	Brigham	\$35,289.32	\$135,289.32	1.57%
*	02/14/96	Marshall, etc	\$150,000.00	\$285,289.32	3.32%
*	09/30/96	Matthews	\$75,000.00	\$360,289.32	4.19%
*	07/21/97	United Nat. Bank	\$357,282.04	\$717,571.36	8.34%
*	10/07/97	Wasselle	\$90,000.00	\$807,571.36	9.39%
R-97-108	03/19/97	Town of Davie	\$2,000,000.00	\$2,807,571.36	32.65%
R-97-128	04/16/97	Wassell, etc.	\$140,000.00	\$2,947,571.36	34.27%
R-97-189	05/21/97	Rudman, etc.	\$25,000.00	\$2,972,571.36	34.56%
R-97-314	09/17/97	Wasselle, etc.	\$150,000.00	\$3,122,571.36	36.31%
R-97-380	11/05/97	Douse	\$50,000.00	\$3,172,571.36	36.89%
R-97-430	12/17/97	Foster, etc	\$50,000.00	\$3,222,571.36	37.47%
R-98-11	01/07/98	Grenawald	\$200,000.00	\$3,422,571.36	39.80%
R-98-29	01/21/98	Aires, etc	\$125,000.00	\$3,547,571.36	41.25%
**	02/19/98	Bregman, etc	\$75,000.00	\$3,622,571.36	42.12%
**	03/16/98	Aires, etc	\$130,000.00	\$3,752,571.36	43.63%
**	03/16/98	Matthews	\$75,000.00	\$3,827,571.36	44.51%
**	04/07/98	Amaral	\$45,000.00	\$3,872,571.36	45.03%
**	06/09/98	Marshall, etc	\$200,000.00	\$4,072,571.36	47.36%
**	06/18/98	Amaral	\$50,000.00	\$4,122,571.36	47.94%
**	12/23/98	Kushner	\$20,000.00	\$4,142,571.36	48.17%
**	12/23/98	Cicchini	\$115,000.00	\$4,257,571.36	49.51%
R-99-28	01/20/99	Cicchini	\$85,000.00	\$4,342,571.36	50.50%
R-99-45	02/03/99	Hustins	\$200,000.00	\$4,542,571.36	52.82%
R-99-95	03/16/99	Amaral, etc.	\$125,000.00	\$4,667,571.36	54.27%
R-99-96	03/16/99	Douse	\$50,000.00	\$4,717,571.36	54.86%
R-99-118	04/07/99	Hustins	\$70,000.00	\$4,787,571.36	55.67%
R-99-166	05/05/99	Marshall, etc	\$115,000.00	\$4,902,571.36	57.01%
R-99-260	08/04/99	Amaral, etc.	\$70,000.00	\$4,972,571.36	57.82%

**JOLMY LIEN SUBORDINATION STATUS (continued)**

<b>Reso Number</b>	<b>Date</b>	<b>Name</b>	<b>Amount of Lien</b>	<b>Cumulative Total of Liens</b>	<b>\$8,600,000.00 Lien % of Appraisal</b>
R-99-261	08/04/99	Lorberbaum, etc.	\$55,000.00	\$5,027,571.36	58.46%
R-99-286	09/01/99	Seigel, etc.	\$60,000.00	\$5,087,571.36	59.16%
R-99-299	09/15/99	Wasselle, etc.	\$150,000.00	\$5,237,571.36	60.90%
R-99-253	11/17/99	Cicchini	\$220,000.00	\$5,457,571.36	63.46%
R-2000-32	03/01/00	Crane, etc.	\$250,000.00	\$5,707,571.36	66.37%
R-2000-79	04/18/00	Seigel, etc.	\$55,000.00	\$5,762,571.36	67.01%
R-2000-90	05/03/00	Cicchini, etc.	\$35,000.00	\$5,797,571.36	67.41%
R-2000-185	08/02/00	Marshall, etc	\$80,000.00	\$5,877,571.36	68.34%
R-2000-271	11/15/00	Mull	\$100,000.00	\$5,977,571.36	69.51%
R-2001-60	03/07/01	G & S Wasselle	\$120,000.00	\$6,097,571.36	70.90%
R-2004-	10/06/04	United National Bank/Mellon Bank	\$357,262.00	\$6,454,833.36	75.06%

\*indicates a lien was filed prior to R-97-108. The lien may have been recorded at a later date.

\*\*indicates the Town Administrator approved a lien. R-98-68 allowed the Town Administrator to approve subordinations to future mortgages without Town Council approval so long as the total encumbrances and the Town's lien do not exceed 50% of the value of the property.